IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST.)NO. 20348 OF 2005
IN
Notice of Motion No. of 2005
In
B.C.C.C. Suit No. 3475 of 2005

Capt. Kailash N. Harsh & Ors. ..Appellants.

Versus

S. Ramanujam & Ors. ..Respondents.

Mr.M.S.Doctor with Mr.S.B.Shetye for the Appellants.
Mr.D.J.Khambatta, Sr.Counsel with Mr.S.V.Doijode i/by M/s. Doijode Associates for Respondent No. 12.

CORAM : B.H. MARLAPALLE, J.
DATED : 08TH SEPTEMBER,2005.

P.C.:

1. Heard, Mr.Doctor with Mr. Shetye, the learned counsel, for the Appellants, who are the plaintiffs in B.C.C.C.Suit No. 3475/2005. In the said suit they have challenged the notice dated 17.08.2005, calling for an extra-ordinary general meeting of respondent No.12 Club i.e. Bombay Presidency Golf Club Limited. In the said suit they have moved a notice of motion, which has been directed to be registered and made returnable by the learned Judge of the City Civil Court on 5th September, 2005. At the same time, the learned Judge declined to grant an ad-interim relief to stay the proposed E.G.M. scheduled today i.e. 8.9.2005 at 6 p.m..

2. Heard Mr. Doctor, the learned counsel for the appellants and Mr. Khambatta, the learned counsel for the respondent No.12. Perused the provisions of Article 39, 40, 47 and 49 of the Memorandum of Association of defendant No.4. The proposals submitted by both the parties for interim arrangement were considered. However, in the peculiar facts of this case, it would not be desirable either to postpone the proposed EGM, already scheduled for today or to withdraw the notices issued already. The interest of justice would be better served by directing the courts below to dispose of the notice of motion within a fixed period and at the same time, the result of the EGM scheduled today, should not be made known till the said notice of motion is decided. Clause 47 provides for voting in the EGM subject to the restrictions set out in clause 14.

3. This appeal is, therefore, disposed of in the following terms :-

i. The pending notice of motion in the BCCC Suit No. 3475/2005, shall be heard and decided on its own merits and without being influenced by any observations made in the

ad-interim order dated 5.9.2005; on or before 21st September,2005.

ii. The defendant No.12 shall file its reply to notice of motion by 12th September, 2005, if the same is not filed and rejoinder if any, shall be filed by the plaintiffs by 14th September,2005.

iii. In the EGM, scheduled today, the resolution, if any, be passed by a screte ballot voting as provided under clause 47 read with clause 49 of the Memorandum of Association and the ballots will be counted on 21.9.2005 at about 7 p.m., i.e. after the decision on the notice of motion is pronounced by the trial court.

iv. In case, there is an occasion to count the votes so as to decide the fate of the resolution, the election in the AGM scheduled on 24.09.2005 shall be on the basis as if the nominations already filed were in time.

4. In view of the above order in this Appeal, the Civil Application (St.) No.1032/2005 does not survive.

DT.08.09.05 (B.H.Marlappalle,J)